

## REMARKS

In the present Office Action, the Examiner objects to the disclosure and claim 23 as they contain the term "100Å5Hz" which appears to be an error. The Examiner rejects claims 1-2, 6, 21, 24-26 and 36-37 under 35 U.S.C. § 102. The Examiner also rejects claims 2, 6-9, 22-23, 26, 38-40 under 103(a). Finally, the Examiner indicates that claims 3-5, 10-20, 27-35 would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. The Applicant believes it has addressed the Examiner's objections and overcome the Examiner's rejections as discussed below.

### *Specification*

The Applicant has changed the term "100Å5Hz" to "100Hz."

### *Claim Objections*

The Applicant has amended claim 23 so that the term "100Å5Hz" is now "100Hz." The amendment was for clarification purposes only.

### **35 U.S.C. § 102**

The Examiner rejects claims 1-2, 6, 24-26 and 36-37 under 35 U.S.C. § 102(b) as being anticipated by Yoshio (JP 410094576A). The Applicant believes it has traversed the Examiner's rejection as discussed below.

According to the MPEP, for anticipation under §102, the reference must teach every aspect of the claimed invention either explicitly or impliedly. See MPEP §706.02. Any feature not directly taught must be inherently present. *Id.* Here, Yoshio does not teach every aspect of the Applicant's invention as claimed.

Yoshio is directed to a vibrator in a body that is electrically energized to actuate a double-axis motor. A pair of left and right massaging bodies are on the top

of the body that vibrate together with the body to massage an affected part by vibration of the massaging bodies. The massaging bodies can be adjusted to different intervals by sliding the bodies along a pair of non-parallel guide grooves. The massaging bodies are elastically held by a spring. As mentioned above, Yoshio, however, does not disclose every limitation of the Applicant's pending claims.

With regard to claim 1, the Applicant has amended the claim to clarify that the massage device includes a stationary base and that the massage heads are operatively connected to said base and protrude vertically from the base. The Applicant has also clarified that the massage heads can be selectively positioned by the user vertically relative to one another and relative to the stationary base. Support for the amendments is found in the specification of the application and no new matter has been entered.

Yoshio does not include a means for selectively positioning its massaging bodies 20 vertically relative to each other and, importantly, relative to the body 1 (Yoshio, FIGS. 1, 12). One cannot raise or lower the massaging bodies of Yoshio without tilting or moving the base 1. This structural difference is a significant in that raising and lowering the massage heads of the present invention increases or decreases the pressure on the user's muscles and provide its myotherapeutic effect. With the device of Yoshio, one cannot get this effect unless another person pushes on the device (Yoshio, FIG. 11(d)). The present invention is designed to overcome this problem and allow the user to adjust the pressure himself through the vertical displacement of the massage heads. Again, the limitations of amended claim 1 are not found in Yoshio and, accordingly, Yoshio does not anticipate claim 1.

Claims 2, 6, 26 and 36-37 and all depend on claim 1 and contain its limitations. For the reasons discussed above, these claims are not anticipated by Yoshio and are allowable. Applicant has cancelled claims 24 and 25.

Additionally, the Examiner rejects claims 1, 21 and 36-37 as being anticipated by Goldfarb (U.S. Pat. No. 3,310,050).

Goldfarb is directed to a massaging garment with vibrators located in back and chest sections. Goldfarb does not, however, disclose all of the limitations of amended claim 1.

As discussed above, the Applicant has amended claim 1 to clarify that the massage device includes a stationary base and that the massage heads are operatively connected to said base and protrude vertically from the base. The Applicant has also clarified that the massage heads can be selectively positioned vertically relative to one another and relative to the stationary base.

Goldfarb does not disclose a stationary base with massage heads operatively connected to the base. Goldfarb involves a garment with vibrators attached to the garment. As there is no stationary base, there is no way to selectively adjust the vibrating units 2-11 relative to the base. As mentioned above, this structural difference is significant in that raising and lowering the massage heads of the present invention relative to the base increases or decreases the pressure on the user's muscles and provide its myotherapeutic effect. With the device of Goldfarb, much like with Yoshio, one cannot get this effect unless another person pushes on the device. The present invention is designed to overcome this problem and allow the user to adjust the pressure himself through the vertical displacement of the massage heads relative to the base. Again, the limitations of amended claim 1 are not found in Goldfarb and, accordingly, Goldfarb does not anticipate claim 1.

Claim 21 depends from claim 1 and contain its limitations. For the reasons discussed above, these claims are not anticipated by Goldfarb.

With regard to claims 36 and 37, the Applicant has amended the claim 36 to clarify that the method involves providing a device that includes a stationary base

and that the massage heads are positioned vertically by the user relative to one another and to the base. Goldfarb does not disclose these limitations. Claim 37 depends from claim 36 and contains the same limitations. As such, amended claims 36 and 37 are not anticipated by Goldfarb.

**35 U.S.C. § 103**

The Examiner rejects claims 2, 6-9, 26, 38-40 under 103(a) as being unpatentable over Goldfarb in view of Wu (U.S. Pat. No. 6,511,446).

Goldfarb has been summarized above. Wu is directed to a massage bead structure with heat application effect. The structure is a press bead disposed with a vibrating wave-making massage apparatus for heat application which has a semi-circular bead formed by a round canopy case body embedded with a vibrating wave generator therein and clamped outwardly with a heating piece composed by a ceramic-made electric resistance of positive temperature coefficient. The entire structure is inserted and connected to a leather mat plane in the shape of a fabric piece and formed into a plurality of beads arranged in rows. The heat wave produced from the heat generator and transmitted through the round canopy case body is capable of synchronously massaging and being applied to the acupoint portion to obtain the complementary effect of physical therapy.

As discussed above, the Applicant has amended claim 1 to clarify that the massage device includes a stationary base and that the massage heads are operatively connected to said base and protrude vertically from the base. The Applicant has also clarified that the massage heads can be selectively positioned by the user vertically relative to one another and relative to the stationary base.

Goldfarb does not teach or suggest the limitations of amended claim 1. Specifically, Goldfarb does not teach or suggest a massage device with a stationary base with massage heads that may be selectively positioned vertically relative to the base to increase the pressure on the user's muscles providing a myotherapeutic

effect. Goldfarb does not provide myotherapy and does not mention the problems the present invention overcomes. If fact, the device of the present invention addresses problems in the art including those present in Goldfarb, i.e., you would need an additional person to press on the vibrating units in the garment to increase pressure on them.

Wu adds nothing to the teachings of Goldfarb. The massage beads of Wu do not allow a user to selectively position the beads vertically relative to the mat. Moreover, Wu does not involve or discuss myotherapy and does not allow a user to selectively adjust the pressure of the beads. Accordingly, the combination of Wu and Goldfarb does not disclose, teach or suggest the limitations of amended claim 1.

With regard to claims 2, 6-9 and 26, these claims contain the limitations of amended claim 1 and are allowable for the aforementioned reasons.

With regard to claims 38 –40, the Applicant has amended claim 36 as discussed above. The combination of Wu and Goldfarb does not teach or suggest the limitations of amended claim 36. Claims 38-40 all depend from amended claim 36 are allowable as well.

The Examiner also rejects claims 22-23 under 103(a) over Yoshio in view of Murtonen (U.S. Pat. No. 5,113,852).

Yoshio has been described above. Murtonen is directed to a procedure and device for applying vibration to the human body by means of vibrating elements. In the procedure, the vibrating elements are caused to vibrate in such a manner that they generate intensity pulses and that the intensity pulses generated by different vibrating elements have a phase difference. The device comprises at least two vibrating elements, which are caused to vibrate in such manner that they generate intensity pulses and that the intensity pulses generated by the vibrating elements have a phase difference.

As discussed above, the Applicant has amended claim 1 to clarify that the massage device includes a stationary base and that the massage heads are operatively connected to said base and protrude vertically from the base. The Applicant has also clarified that the massage heads can be selectively positioned by the user vertically relative to one another and relative to the stationary base. As discussed at length above, Yoshio does not teach or suggest these limitations. Murtonen adds nothing to the teachings of Yoshio. As such, the combination of references does not teach or suggest the device of amended claim 1.

Claims 22 and 23 depend from amended claim 1 and contain its limitations. For the reasons discussed above, these claims are allowable.

#### *Allowable Subject Matter*

Per the Examiner's suggestion, the Applicant has rewritten claims 3-5, 10-20, 27-35 in independent form including all the limitations of the base claim and any intervening claims. The claims are now allowable.

## CONCLUSION

Applicant believes that it has overcome the Examiner's rejections and that all of its pending claims are now allowable.

No fees are considered to be due; however, if it is determined that payment of a fee is required, please charge our Deposit Account No. 13-0235.

Respectfully submitted,

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